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its first local service. Thus, La Nueva Radio states that its counterproposal provides a more equitable distribution of aural services.

Discussion

5. La Nueva Radio filed its counterproposal pursuant to § 1.420(i) of the Commission's rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest in the proposed allotment.³ The proposed reallocation of Channel 269C2 at Orange Grove is mutually exclusive with the license site of Station KEKO(FM), Channel 269A, Hebbronville, Texas.

6. First, we must determine if La Nueva Radio's counterproposal results in a preferential arrangement of allotments based upon the FM Allotment priorities.⁴ When considering a reallocation proposal, a comparison is made between the existing allotment and the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments. The proposed reallocation of Channel 269C2 to Orange Grove would trigger a priority 3) because it would provide a first local service. As for the existing allotment at Hebbronville, a staff analysis determined that it provides a second full-time aural service to 178 persons within an area of 420.7 square kilometers. As such, the existing allotment at Hebbronville would ordinarily trigger a priority 2) because it provides a second full-time aural service to 178 persons. However, we consider the population of 178 persons receiving a second full-time aural service *de minimis* when balanced against the benefits that would result from the reallocation of Channel 269C2 to Orange Grove, Texas.⁵ As a result, we treat the existing allotment of Channel 269A at Hebbronville under priority 4), other public interest matters, because Hebbronville currently receives local service from noncommercial FM Station KAZF.⁶ Moreover, Channel 232A and Channel 254A are vacant FM allotments assigned to the community of Hebbronville. We find that the proposed reallocation of Channel 269C2 to Orange Grove would result in a preferential arrangement of allotments when compared to the existing allotment of Channel 269A at Hebbronville.

7. A staff analysis also indicates that the proposed reallocation of Channel 269C2 to Orange Grove would result in a gain of service to 65,973 persons. This gain area provides an additional service to 624 persons in 464.4 square kilometers receiving two services, 177 persons in 1,346 square kilometers receiving three services, and 10,542 persons in 1,660 square kilometers receiving four services. However, the proposed reallocation of Channel 269C2 would result in a loss of service to 6,155 persons. As such, 178 persons in 420.7 square kilometers will receive one service, 5,275 persons in 1,012 square kilometers will receive two services, 293 persons in 143.7 square kilometers will receive three services, and an unpopulated area of 332 square kilometers will receive four services. As noted, the population of 178 persons within the gray area is considered *de minimis*.⁷ We recognize that the reallocation proposal results in loss area but we find the proposed reallocation to Orange Grove is in the public interest

³ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7394 (1990).

⁴ The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)], See *Revision of FM Assignment Policies and Procedures*, 90 FCC Rcd 88, 91 (1988).

⁵ See *Sparta and Buckhead, Georgia*, 16 FCC Rcd 2169 (MMB 2001) and *Seabrook, Huntsville, Bryan, Victoria, Kenedy, and George West, Texas*, 10 FCC Rcd 9360 (1995).

⁶ In any event, if we were to determine that the retention of Station KEKO(FM) at Hebbronville would trigger priority 2), the proposed reallocation at Orange Grove would still be favored because priorities 2) and 3) are co-equal and the population of 1,288 persons at Orange Grove is larger than the 178 persons receiving a second full-time aural service. See, e.g. *Canton, Cartersville, Douglasville, Villa Rica and Newnan, Georgia*, 3 FCC Rcd 737 (MMB 1988)(second full-time aural service at Canton (17,167 persons) favored over a first local service at Villa Rica (population 3,420).

⁷ *Id.* note 6.

considering the overall population net gain. In addition, the staff analysis determined that the proposed reallocation of Channel 269C2 to Orange Grove would not cover any part of an Urbanized Area. Therefore, La Nuevo Radio is not required to provide a *Tuck* showing.⁸

8. The instant counterproposal conflicts with the *Notice's* proposal to allot Channel 271A at Freer. A review of the proposals indicates that both communities are deserving of an FM channel. A comparison of the proposals is guided by the policy set forth in *Revision of FM Assignment Policies and Procedures* since there are no alternative channels available for either community.⁹ The proposal to allot Channel 271A to Freer is compared under priority 4), other public interest factors since the allotment would be a third local service.¹⁰ La Nuevo Radio's counterproposal is evaluated under priority 3) because it proposes the reallocation of Channel 269C2 to Orange Grove, as its first local service. To this end, we find that La Nuevo Radio's counterproposal results in a preferential arrangement of allotments and would better serve the public interest. Therefore, we will grant La Nuevo Radio's counterproposal by substituting Channel 269C2 for Channel 269A at Hebbronville, by reallocating Channel 269C2 from Hebbronville to Orange Grove, as its first local service, and by modifying the Station KEKO(FM) license accordingly. The staff analysis further determined that Channel 269C2 can be allotted to Orange Grove in compliance with the Commission's minimum distance separation requirements provided there is a site restriction of 28.6 kilometers (17.8 miles) west of the community.¹¹ Although concurrence has been requested for Channel 269C2 at Orange Grove, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Orange Grove herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement."

9. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED, That effective May 3, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
Hebbronville, Texas	232A, 254A
Orange Grove, Texas	269C2

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the authorization of La Nueva Cadena Radio Luz, Inc. for Station KEKO(FM), Channel 269A, Hebbronville, Texas, IS MODIFIED to specify operation on Channel 269C2 at Orange Grove, Texas, subject to the following conditions:

(a) Within 90 days of the effective date of the *Order*, the licensee

⁸ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1998) ("*Tuck*") and *RKO General*, 5 FCC Rcd 3222 (1990).

⁹ *Id.* note 4.

¹⁰ Station KBRA(FM), Channel 240A, is currently licensed to Freer; and Channel 288A is a vacant FM allotment currently assigned to the community.

¹¹ The reference coordinates for Channel 269C2 at Orange Grove, Texas are 28-00-01 North Latitude and 98-13-24 West Longitude

of Station KEKO(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

11. Pursuant to Sections 1.1104(1)(k) and (2)(k) of the Commission's rules, any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, **IF THE REQUEST IS GRANTED**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, La Nueva Cadena Radio Luz, Inc., licensee of Station KEKO(FM), Hebbroville, Texas, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the change in community of license for Station KEKO(FM), Channel 269A, Hebbroville, Texas, to Channel 269C2, Orange Grove, Texas at the time its Form 301 application is submitted.

12. **IT IS FURTHER ORDERED**, That the Petition for Rule Making filed by Linda Crawford requesting the allotment of Channel 271A at Freer IS **DENIED**.

13. **IT IS FURTHER ORDERED**, That the aforementioned proceeding IS **TERMINATED**

14. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
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Media Bureau